IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 11, 2007

IN RE C.I.J.

Appeal from the Juvenile Court for Franklin County
No. J03735 Thomas C. Faris, Judge

No. M2006-02192-COA-R3-PT - Filed July 17, 2007

This case concerns the termination of a mother's parental rights to her minor child, such child having been in the custody of the state since his birth in 2004. At trial, the Department of Children's Services introduced medical records regarding the 2002 premature delivery of a stillborn child to the mother. The medical records show that the mother tested positive for cocaine at the 2002 birth. The mother also tested positive for cocaine twice immediately before the birth of C.I.J. After a trial, the Juvenile Court terminated the mother's parental rights. The mother appealed the introduction of the medical records into evidence, as well as the termination of her parental rights. The Department maintained that such records were introduced strictly to refute the mother's testimony that she had never used cocaine. The mother argued that the Department did not follow the procedures set forth in Tenn. Code Ann. § 68-11-401 *et seq.*, and therefore the records constituted inadmissible hearsay. We affirm the judgment of the Juvenile Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

WILLIAM B. CAIN, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

David L. Stewart, Winchester, Tennessee, for the appellant, Kasondra Johns.

Robert E. Cooper, Jr., Attorney General and Reporter; Amy T. McConnell, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee, Department of Children's Services.

OPINION

I. FACTUAL BACKGROUND

Kasondra Ann Johns ("Appellant") gave birth, approximately two and a half months prematurely, on October 19, 2004. Appellant began a twenty-two month incarceration only a few days before C.I.J.'s birth. On October 25, 2004, the Department of Children's Services ("Appellee")

obtained custody of C.I.J. by way of a Petition for Temporary Custody, on the grounds that Appellant tested positive for cocaine on October 15 and 18, 2004; C.I.J. tested negative for cocaine after his birth. The Franklin County Juvenile Court found that Appellant committed severe abuse, stating in its Order that "there is a significant risk to this minor child that substantial harm could result due to the mother taking cocaine during her late pregnancy."

On March 2, 2006, Appellee petitioned to terminate the parental rights of Appellant to C.I.J.[1] The petition cited the following in support of termination: Appellant's lack of reasonable efforts to provide a suitable home for C.I.J.; Appellant's lack of concern for C.I.J.; severe child abuse to both C.I.J. and a sibling; incarceration of both parents; Appellant's failure to make adjustment of circumstances, conduct, or conditions to provide a safe environment for C.I.J.; lack of a meaningful relationship between Appellant and C.I.J.; and Appellant's unsafe home environment.

Appellant has a criminal background. On June 27, 1998, she committed and later pled guilty to felonious possession of a schedule two substance. She did not conform to the plea agreement, and was sentenced to three years in Community Corrections on April 29, 1999. In June of 2003, Appellant was sentenced to four years of probation following pleading guilty to reckless endangerment with a deadly weapon (specifically, cocaine). The following year, Appellant was arrested for violating her probation and on May 27, 2004, was sentenced to thirty-five days in jail. Appellant failed to report for her incarceration, resulting in another violation. Appellant was then incarcerated from October of 2004, just a few days before C.I.J.'s birth, until August 9, 2006, or approximately two weeks prior to the trial on this matter.

Appellant has given birth to seven children, six of whom are still living, by five different fathers. At the time of the trial, the children were twenty, eighteen, sixteen, eleven, six, and nineteen months. None of the children were living with Appellant, and all of the children have been in State custody at some point.

Since he was taken into custody by Appellee a few days after his birth, C.I.J. has lived with the same foster parents. His foster mother testified that for the first three months or so, C.I.J. suffered from sleep apnea, requiring medications and several doctor visits, but that he is now healthy. While incarcerated, Appellant wrote letters and made phone calls in an effort to follow C.I.J.'s development. Two visitation sessions between Appellant and C.I.J. were scheduled, but never took place. Appellant's family exercised visitation with C.I.J. on several occasions. Following her twenty-two month incarceration, Appellant obtained a janitorial position with an hourly wage of nine dollars. At the time of trial, Appellant was living with her sister until the conditions of her parole allowed her to move into a house she owned.

[1] The petition also included C.I.J.'s biological father as a Defendant, but the termination proceedings against the father were severed for hearing at a later date. In November of 2006, the father voluntarily surrendered his parental rights.

The trial took place on August 25 and 28, 2006. At trial, Appellant repeatedly denied that she had ever used or been addicted to cocaine. The Juvenile Court issued its Order terminating Appellant's parental rights on September 26, 2006, after clear and convincing evidence showed that Appellant severely abused C.I.J. and that termination was in his best interest. The Order stated that "[t]he Court does not find the mother's statements of non-use of cocaine . . . to be credible." Further, the Order stated:

> Although [Appellant] made efforts to rehabilitate herself while incarcerated for her probation violation, [Appellant] has only been released since August 9, 2006, and has established no meaningful long-term proof that she has changed her lifestyle. . . . Although her current physical environment is reportedly safe, there are no assurances that the mother will continue to reside there, and she had been there less than three weeks at the time of this hearing.

Appellant presents two issues on appeal: (1) whether the Juvenile Court committed prejudicial error and violated Appellant's rights to due process of law by accepting medical records into evidence that did not comply with Tenn. Code Ann. § 68-11-401 *et seq.*; and (2) whether the Juvenile Court erred in finding by clear and convincing evidence that the best interests of the child favored a termination of parental rights.

II. STANDARD OF REVIEW

This Court has held:

> To sever the parent-child relationship, a court must insure that clear and convincing evidence supports such a drastic measure. Clear and convincing evidence is "evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." Requiring a level of certainty between "beyond a reasonable doubt" and by the "preponderance of the evidence," the "clear and convincing" standard demands a high probability that the facts asserted are true. Such evidence should produce in the fact-finder's mind a firm belief or conviction as to the truth of the allegations sought to be established. Thus, although we review individual factual findings under the preponderance standard, we consider the combined weight of those established facts to determine whether they clearly and convincingly support the elements required for terminating parental rights.
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> As noted above, a court may terminate parental rights when at least one statutory ground for termination exists and when the termination of those rights is in the best interests of the child. Clear and convincing evidence must support each of these requirements. First, every termination case requires the court to determine whether the parent whose rights are at issue has chosen a course of action, or inaction, as the case may be, that constitutes one of the statutory grounds for termination. But, not every circumstance evidencing parental unfitness justifies the termination of parental rights; indeed, the existence of a statutory ground for

> termination does not end the matter. Once a court finds that clear and convincing evidence proves the existence of at least one statutory ground, the inquiry then shifts to the child's best interests. When a court considers the factors set forth in Section 36-1-113(I) of the Tennessee Code, viewed from the child's perspective, and concludes that termination is in the child's best interest, then the entry of a termination order is appropriate.

In re B.P.C., No. M2006-02084-COA-R3-PT, 2007 WL 1159199, at *5-6 (Tenn.Ct.App. Apr. 18, 2007) (citations omitted).

III. GROUNDS FOR TERMINATION OF PARENTAL RIGHTS

Parental rights in this case were terminated by the trial court based upon a prior finding by the trial court of severe child abuse under Tenn.Code Ann § 36-1-113(g)(4). Appellant does not directly challenge the finding of severe child abuse as indeed there is little basis for challenging such finding. Appellant tested positive for cocaine on two separate occasions immediately prior to the birth of C.I.J. and the finding of severe child abuse was not appealed.

Severe child abuse is condemned by statute and has consequences concerning termination of parental rights far more pronounced than other grounds for termination. In an exhaustive opinion construing the effect of a finding of severe child abuse and its effect as to grounds of termination, this Court held:

> A finding of severe abuse triggers other statutory provisions, including a prohibition on returning the child to the home of any person who engaged in or knowingly permitted the abuse absent consideration of various reports and recommendations. Tenn.Code Ann § 37-1-130(c). Even with such consideration,
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> > No child who has been found to be a victim of severe child abuse shall be returned to such custody at any time unless the court finds on the basis of clear and convincing evidence that the child will be provided a safe home free from further such brutality and abuse.
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> Tenn.Code Ann. § 37-1-130(d). Further, Tenn.Code Ann. § 37-1-166(g)(4)(A) provides that reasonable efforts to reunify a family are not required to be made if a court has determined that a parent has subjected the child or a sibling to severe child abuse.
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> The most serious consequence of a finding that a parent has committed severe child abuse is that such a finding, in and of itself, constitutes a ground for termination of parental rights. Tenn.Code Ann. § 36-1-113(g)(4) ("the parent or guardian has been found to have committed severe child abuse as defined in § 37-1-102, under any prior order of a court.") The ground itself is proved by a prior court order finding

> severe child abuse, and the issue of whether abuse occurred is not re-litigated at the termination hearing.

State v. M.S. and J.S., No. M2003-01670-COA-R3-CV, 2005 WL 549141, at *10 (Tenn.Ct.App. Mar. 8, 2005).

Grounds for termination of parental rights have already been adjudicated by the clear and convincing evidence findings of severe child abuse that occurred in the dependent and neglect judgment.

IV. MEDICAL RECORDS AND DUE PROCESS OF LAW

At trial, Appellee introduced Appellant's medical records pertaining to a stillborn child ("Baby Girl Wooten") that Appellant gave birth to prematurely in 2002. The records, dated August 7, 2002, contain the results of a drug test showing that Appellant tested positive for cocaine at the birth of Baby Girl Wooten. Following Baby Girl Wooten's death, Appellant was sentenced to four years of probation for reckless endangerment with a deadly weapon (cocaine), to which she pled guilty. Further, the medical records state the following:

> I did discuss with the patient that the most likely explanation for the placental abruption and intrauterine fetal demise was the patient's positive urine drug screen for cocaine. I explained to her that cocaine causes an elevation in blood pressure which can then cause a placental abruption. I have counseled the patient that not only is that particular drug dangerous for the baby as obvious by the intrauterine fetal demise, but it is also dangerous to her and can result in heart attack, stroke and possibly even death.

Appellant argues that by admitting such evidence, the Juvenile Court committed prejudicial error and violated Appellant's right to due process. Appellant asserts that Appellee introduced the records "under the guise of" Tenn. Code Ann. § 68-11-401 *et seq.*, or the Hospital Records as Evidence provisions, which allow hospital records to be subpoenaed and entered into evidence under the business records exception to the hearsay rule. However, Appellant alleges that Appellee failed to comply with three critical procedural sections of the Code. First, Tenn. Code Ann. § 68-11-402(b)[2] requires a party seeking to introduce medical records to provide a copy of the subpoena to opposing counsel at least ten days prior to trial, which Appellee did not do. Second, Tenn. Code

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[2] Tenn. Code Ann. § 68-11-402 states the following in relevant part:

68-11-402. Furnishing copies of records in compliance with subpoenas.

. . . .

(b) Any party intending to use the provisions of this section shall furnish the adverse party or the adverse party's attorney a copy of the subpoena duces tecum not less than ten (10) days prior to the date set for the trial of the matter for which the records may be introduced.

Ann. § 68-11-403[3] requires that the custodian of the medical records deliver such records to the court in a sealed envelope, which Appellee did not do. Appellant asserts that sealing the record ensures that no documents have been added to or subtracted from the records, and because Appellee failed to do so, the Juvenile Court could not be certain that the proper records were attached to the custodian's affidavit, and without such reliability, the records become inadmissible hearsay. Third, Tenn. Code Ann. § 68-11-405[4] requires that the custodian of the medical records sign an affidavit to accompany such records. Appellant asserts that the affidavit that accompanied the medical records in this case was notarized on May 5, 2003, or almost three years before the trial. Appellant argues that the extended period of time between the execution of the affidavit and the trial undermines the reliability established by the procedural requirements of Tenn. Code Ann. § 68-11-401 *et seq.* Appellant maintains that the requirements of due process are ensured by Tenn. Code

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[3] Tenn. Code Ann. § 68-11-403 states the following:

68-11-403. Sealing, identification and direction of copies.

The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness and date of subpoena clearly inscribed on the envelope or wrapper. The sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of such court or to the judge thereof;

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at such officer's place of business; and

(3) In other cases, to the officer, body or tribunal conducting the hearing, at a like address.

[4] Tenn. Code Ann. § 68-11-405 states the following in relevant part:

68-11-405. Affidavit of custodian as to copies - Costs.

(a) The records shall be accompanied by an affidavit of a custodian stating in substance:

(1) That the affiant is duly authorized custodian of the records and has authority to certify the records;

(2) That the copy is a true copy of all the records described in the subpoena;

(3) That the records were prepared by the personnel of the hospital or community mental health center, staff physicians, or persons acting under the control of either, in the ordinary course of hospital or community mental health center business at or near the time of the act, condition or event reported in the records; and

(4) Certifying the amount of the reasonable charges of the hospital or community mental health center for furnishing such copies of the record. . . .

Ann. § 68-11-401 *et seq.*, as the section serves to maintain the reliability of medical records, and that because such requirements were not met, the records should have been excluded as hearsay. Further, Appellant maintains that Appellee failed to disclose such documents until the day of trial, and Appellant was therefore unable to adequately prepare for trial, resulting in the absence of fundamental fairness and due process of law.

Appellee argues that the records were not admitted for the truth of the matters therein, but to impeach Appellant's credibility when she stated that she was not on drugs at the birth of Baby Girl Wooten. Therefore, Appellee alleges, the Juvenile Court did not abuse its discretion. Further, Appellee argues that the records did not unfairly prejudice Appellant, in that she had already admitted to pleading guilty to reckless endangerment with a deadly weapon following Baby Girl Wooten's death. Therefore, Appellee maintains, the medical record showing that cocaine was in her system was "merely cumulative of Appellant's prior admission." Finally, Appellee argues that the Juvenile Court's admission of the records is hardly reversible error under Tenn. R. App. P. 13(d)[5], as abundant evidence exists, exclusive of the medical records, supporting a termination of Appellant's parental rights.

At trial, the following exchange took place regarding the admission of the medical records into evidence:

> MR. HARPE: Your Honor, I would wish to move into evidence the medical records of Southern Tennessee Medical Center, that this matter is pursuant to 68-11-406[6] whereby it would be appropriate to do so at this time. Counsel, do you have a copy of this?

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[5] Tenn. R. App. P. 13 states the following in relevant part:

Rule 13. Scope of Review.

. . . .

(d) Findings of Fact in Civil Actions.

Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Findings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict.

[6] **68-11-406. Admissibility of copies and affidavits.**

(a) The copy of the record shall be admissible in evidence to the same extent as though the original of the record were offered and the custodian has been present and testified to the matters stated in the affidavit.

(b) (1) The affidavit shall be admissible in evidence and the matters stated in the affidavit shall be presumed true in the absence of a preponderance of evidence to the contrary. (2) When more than one (1) person has knowledge of the facts, more than one (1) affidavit may be made.

MR. STEWART: Yes, and I object on three grounds. First, I sent discovery asking for all documents intended to be used as evidence at trial. I did not receive this until actually the five minute recess that we took after we opened court. Number two is, I think it violates the Confrontation Clause. As we know, Ms. Johns has a right to confront witnesses against her. Dr. Farmer is not here to testify as I understand it. And number three, I think it violates the rule against hearsay. And for all those reasons I think it's inadmissible.

THE COURT: What's your response, Mr. Harpe? I don't have that code section directly in front of me. Do you not need a custodian or is that an exception?

MR. HARPE: It is an exception and I have the statutory language, Your Honor, which I am prepared to give to the Court to be viewed. . . . There are two applicable aspects. Your Honor, basically it is regarding the admissibility of copies and affidavits . . . And then when you go into 68-11-302[7] it's definitions regarding hospital records and it's a wide spectrum of what may be introduced. Of course the wide spectrum is not applicable to this. There is something else that I am going to attempt to enter into the record that would really more fit the aspect of the 302 definitions being provided to the Court. But clearly it's in the aspect regarding health facilities and through that they are admissible simply by an affidavit as 68-11-406 allows. And what it simply says is that a copy of this is admissible, the custodian

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[7] **68-11-302. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Board" means the board for licensing health care facilities, as established in § 68-11-203;
(2) "Business records" means all those books, ledgers, records, papers and other documents prepared, kept, made or received at hospitals that pertain to the organization, administration or management of the business and affairs of hospitals, but that do not constitute hospital records as defined in subdivision (5);
(3) "Department" means the department of health;
(4) "Hospital" means any institution, place, building or agency that has been licensed by the board, as defined in § 68-11-201, or any clinic operated under the authority of a local or regional health department established under chapter 2, parts 6 and 7, of this title;
(5) (A) "Hospital records" means those medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations, and other written, electronic, or graphic data prepared, kept, made or maintained in hospitals that pertain to hospital confinements or hospital services rendered to patients admitted to hospitals or receiving emergency room or outpatient care; (B) "Hospital records" also includes reductions of the original records upon photographic film of convenient size as provided in § 68-11-306; (C) "Hospital records" do not, however, include ordinary business records pertaining to patients' accounts or the administration of the institution;
(6) (A) "Patient" includes, but is not limited to, outpatients, inpatients, persons dead on arrival, persons receiving emergency room care, and the newborn; (B) For the purposes of this part, an unborn fetus shall not be considered a patient, whether the result of miscarriage or abortion; and
(7) "Retirement" means the withdrawal from current files of hospital records, business records, or parts thereof on or after the expiration of the applicable period of retention established pursuant to § 68-11-305.

does not need to be here, that this affidavit takes the place of that. Further that there is a presumption of truth in the absence of a preponderance of evidence to the contrary.

THE COURT: Well, I have read the portions you've referred to about the custodian not being present. What do you say to counsel's objection that you didn't hand it to him until about five minutes ago?

MR. HARPE: Well, Your Honor, basically I'm not sure what we did cover as far as the discovery information. I need to see that particularly. But if – she stated that she did not – she denied that she was under the influence of cocaine. So therefore it would come in for impeachment purposes and there's no way we can know what to provide to the Court to respond to her – I mean, when you do discovery there's no way we can anticipate. I mean, we can anticipate things that we're going to introduce to the Court that we're going to prove, but if she denies something, then it simply comes in for impeachment purposes. There's no way we can anticipate what evidence that we need to introduce if her veracity has been compromised.

MR. STEWART: Your Honor, she admitted to the drug screen. That's not anything that she denied as far as I recall in her immediate testimony.

THE COURT: She admitted that the drug screen was positive. She questioned the results and denies that they're legitimate. That's at least my general understanding.

MR. STEWART: But that wouldn't – I mean, she's admitted to what he's trying to introduce. So as far as credibility goes, it's not attacking her credibility. She questions the credibility of the drug screen. But that shouldn't reflect on –

THE COURT: I understand. His further questions, though, were a series of questions that were specifically directed to did the doctor tell you this, or did the doctor tell you that or the other. And generally the answers were, you know, I don't recall or some of this is common sense.

MR. STEWART: And again, I don't see how this is attacking her credibility. She did not deny any of the information contained in these medical records.

MR. HARPE: Your Honor, we can clear this up if I can ask one more question.

THE COURT: I will permit the question.

MR. STEWART: And I still stand on the Confrontation Clause issue.

THE COURT: I haven't ruled on it yet, Counsel. I will permit another question.

BY MR. HARPE:

Q Ma'am, were you under the influence of cocaine when Baby Girl Wooten – when you were admitted to the hospital and when you delivered prematurely this child, were you on cocaine at that time?

A No, I was not.

MR. HARPE: Your Honor, we request that it go in. That it's a question for impeachment purposes. . . .

> THE COURT: All right, gentlemen, I have looked at this. Based on 68-11-302 and based on 68-11-406, I note Mr. Stewart's objection. I think this goes more to weight as opposed to admissibility and I am going to permit the hospital record with the date of admission 7/28/02 and discharge of 7/30/02. There are three pages for the record and there's an affidavit signed by a Janice Dotson who is the purported custodian of the medical records. And I permit it for impeachment only to the extent that the defendant affirmatively denies the usage of cocaine during the period of time that this child was born. . . .

Few Tennessee cases have addressed the applicability of Tenn. Code Ann. § 68-11-401 *et seq.*, but the statute has been explained as follows:

> These statutes permit hearsay evidence, deny a party the right to cross-examine or otherwise refute the contents of the medical record, and allow opinion evidence of experts without showing their qualification to testify as an expert. *See Sanders v. Nationwide Ins. Co.*, No. 02S01-9409-CV-00067 (Tenn. at Jackson, Jan. 22, 1996). The principal purpose of Tenn.Code Ann. § 68-11-401 *et seq.* is to provide a procedure for a hospital, where it has no interest in the case, to respond to a subpoena duces tecum for hospital records by filing copies of the records authenticated by affidavit instead of by sending a witness to the hearing with the originals. The copy of the record shall be admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. Tenn.Code Ann. § 68-11-406(a). . . .

State v. Green, No. 03C01-9812-CC-00422, 1999 WL 592229, at *5 (Tenn.Crim.App. Aug. 9, 1999). However, the statutory requirements must be satisfied in order to procedurally be admitted into evidence. *Green*, 1999 WL 592229 at *5.

Compliance with procedural requirements is imperative in the administration of justice. The United States Supreme Court stated as follows:

> As we have said: "The accused does not have an unfettered right to offer [evidence] that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence." *Taylor v. Illinois*, 484 U.S. 400, 410, 98 L. Ed. 2d 798, 108 S. Ct. 646 (1988). Relevant evidence may, for example, be excluded on account of a defendant's failure to comply with procedural requirements. *See Michigan v. Lucas*, 500 U.S. 145, 151, 114 L. Ed. 2d 205, 111 S. Ct. 1743 (1991).

Montana v. Egelhoff, 518 U.S. 37, 42 (U.S.1996).

Another Tennessee case explores whether the failure to comply with the procedural requirements should even be considered error:

> One contention is that the medical records showing the results of the defendant's blood-alcohol test should have been ruled inadmissible because they were "unsealed" by the court clerk, in violation of T.C.A. §§ 68-11-401 et seq. The clerk had opened the envelope in which the records were submitted under subpoena prior to trial, in order to ascertain which case they concerned. Because the defendant has not alleged tampering with the records, nor specified any other manner in which she was prejudiced by the clerk's obviously inadvertent mistake, the error would have to be considered harmless, if it could be considered at all.

State v. Primeaux, No. 4, 1988 WL 3912, at *1 (Tenn.Crim.App. Jan 20, 1988). Therefore, Appellant's objection to the admission of the medical records because they were not sealed is hardly egregious enough to constitute reversible error. Further, the most important provision, requiring an affidavit to accompany the records in order to verify their credibility, was complied with. Tenn. Code Ann. § 68-11-405, which addresses the affidavit requirement, makes no mention of a time period. So the fact that the affidavit was dated almost three years prior to trial is irrelevant. The affidavit accompanying the records met each and every requirement set forth by the Code. Finally, the fact that Appellee did not furnish Appellant a copy of the subpoena within ten days of trial is also not reversible error, as Appellee could not foresee that Appellant would deny the usage of cocaine on the stand, when there was extensive evidence pointing toward excessive usage of cocaine.

Admission of the medical records as to "Baby Girl Wooten" in this case is clearly cumulative under the broad scope of Tenn.Code Ann. § 36-1-113(g)(4). The severe child abuse reflected in these medical records was committed against a "sibling" of C.I.J., which in and of itself violates the statute. The severe child abuse committed against C.I.J. by the positive cocaine test immediately preceding the birth of the child is independently established, has already been adjudicated, and is both undisputed and indisputable. The admission of the medical records does not constitute reversible error.

V. BEST INTEREST

The more serious question for review in this case involves the trial court's determination that clear and convincing evidence establishes that it is in the best interest of the child that the parental rights of the mother be terminated.

> In determining whether termination of parental or guardianship rights is in the best interest of the child pursuant to this part, the court shall consider, but is not limited to, the following:
> (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
> (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;

(3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
(6) Whether the parent of guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(I). We find several factors listed to be an issue in the case at hand: whether a lasting adjustment is possible, the lack of a meaningful relationship between C.I.J. and Appellant, the effect any change would have on C.I.J., Appellant's criminal record and her ability to provide a stable environment for C.I.J., and Appellant's questionable drug habits at the time of C.I.J.'s birth resulting in a finding of abuse by the Juvenile Court.

The trial court found:

> With the finding of severe abuse and the finding that reasonable efforts were not required, the Court must consider the best interests of the child. This criteria is addressed in T.C.A. Section 36-1-113(I). The Court adopts the State's position that this criteria is a floor and not a ceiling, and that the Court may consider other aspects concerning the best interests of the child. Having found the defendant to have a cocaine problem, as determined by the testimony of Investigator Warren, a positive drug screen for cocaine administered by the Franklin County Jail, and the premature delivery of two infants . . . the Court finds that this problem is substantial. The Court also finds that the mother violated her probation twice, and was incarcerated when she tested for cocaine. Based on all the facts set forth herein, the Court finds that the defendant has shown abuse and neglect to this child, as well as his siblings. Although her current physical environment is reportedly safe, there are no assurances that the mother will continue to reside there, and she had been there less than three weeks at the time of this hearing. The Court makes the conclusion of law that it is in the best interests of the child, [C.I.J.], to have parental rights terminated concerning Kasondra Johns.

C.I.J. has been with foster parents since immediately after her birth to a cocaine addicted mother. The trial court did not accept the mother's protestations to the contrary, and the overwhelming weight of the evidence supports the trial court. The best interests of C.I.J. are clearly served by termination of the parental rights of the mother which is established under the necessary clear and convincing evidence rule.

VI. CONCLUSION

The judgment of the trial court is affirmed. Costs of the appeal are taxed to Appellant.

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WILLIAM B. CAIN, J.